

CITY OF CORONA
SETTLEMENT AGREEMENT AND MUTUAL RELEASE

(Jose Miranda v. City of Corona, *et al.*, U.S.D.C. Case No. 5:15-cv01604-VAP-KKx)

1. PARTIES.

This Settlement Agreement and Mutual Release ("Agreement") is entered into by and between Plaintiff Jose Angel Miranda ("Plaintiff"), and Defendants City of Corona, the Corona Police Department (which is not a separate legal entity), police officers Maxwell Medeiros, Richard Youngquist, Timothy Najmowski, Robert Paul and Douglas Doty (all collectively the "City"). Plaintiff and City are sometimes referred to individually as "Party" and collectively as the "Parties" in this Agreement. Plaintiff's counsel, John Tiedt and the law firm of Tiedt & Hurd (collectively "Plaintiff's Counsel"), is also a signatory to this Agreement for the purposes of indemnification as set forth in Sections 3.26 through 3.28 herein, and confidentiality as set forth in Section 3.29 herein.

2. RECITALS.

2.1 Subject Action. On or about August 7, 2015, Plaintiff filed a complaint in the United States District Court for the Central District of California, Case No. 5:15-cv01604-VAP-KKx against the City, and unnamed Doe defendants (the "Subject Action"). In the Subject Action, Plaintiff alleges, in essence, that he was subjected to excessive force and falsely arrested by the City on December 12, 2014 (the "Incident"). The operative complaint in the Subject Action is incorporated herein by reference for the purpose of explaining the nature the Subject Action and the Incident.

2.2 Denial of Plaintiff's Allegations. The City denies generally and specifically each of the allegations made against it in the Subject Action, and further denies any wrongdoing or liability.

2.3 Settlement. The Parties now desire to fully and finally settle and resolve any and all rights, claims, disputes, causes of action and alleged claims which currently exist or may in the future exist in favor of the Parties, including, but not limited to, all claims arising out of and set forth in the Subject Action. The Parties expressly intend that this settlement shall further pertain to any claims for attorneys' fees, expert fees, witness fees, and/or other costs, and any alleged claims for abuse of process, malicious prosecution, civil rights violations, etc., in connection with the Subject Action.

2.4 Consideration. In consideration of the foregoing recitals and mutual covenants and warranties set forth herein, and for other good and valuable consideration, the receipt of which are hereby acknowledged, the Parties agree to the terms of this Agreement.

3. TERMS.

3.1 Recitals. The Recitals are incorporated into and are a part of this Agreement.

3.2 City Settlement Obligation. In consideration of this Agreement and the promises set forth herein, the City agrees to pay to Plaintiff the total sum of One-Hundred-Forty-Nine Thousand Dollars (\$149,000) (the "Settlement Amount") in full and complete settlement of the Subject Action and any liability arising out of the Incident. The Settlement Amount shall be in the form of a check payable to the Tiedt & Hurd Client Trust Account, and shall be mailed to Plaintiff's Counsel within 15 business days of the execution of this Agreement by Plaintiff and her attorney. Plaintiff's Counsel shall provide to the City the tax identification number of the account to which the Settlement Amount is paid, in order to facilitate payment and compliance with this Agreement.

3.3 Plaintiff's Settlement Obligation; Dismissal of Action. In further consideration of this Agreement, and the promises set forth herein, Plaintiff agrees to execute and cause to be filed a full and complete dismissal of the Subject Action as against all parties to the Subject Action, including all Doe defendants, with prejudice, within five (5) business days of payment of the Settlement Amount. Plaintiff will also file a notice of settlement within five (5) business days of execution of this Agreement by the City.

3.4 Each Party to Bear Its Own Costs and Fees. Each Party shall bear its own attorney's fees and all other costs (including costs of expert witnesses or other consultants) incurred in the preparation for filing, prosecution of and defense of the Subject Action and in the preparation, negotiation, and drafting of this Agreement.

3.5 Mutual Release. In further consideration of this Agreement and in recognition of the benefits to be derived therefrom, and except as to the rights, duties, and obligations of the Parties as set forth in this Agreement, the Parties, and each of them, hereby release and fully, finally and forever discharge each and every other Party, as well as their respective elected and appointed officials, board members, owners, predecessors, successors, heirs, executors, administrators, members, managers, assigns, agents, directors, officers, partners, employees, representatives, insurance companies, law firms and lawyers, and all persons acting by, through, under, or in concert with them or any of them, past and present (hereinafter collectively called "Additional Releasees") of and from any and all manner of actions or causes of action, in law or in equity, suits, debts, liens, liabilities, claims, demands, and damages of any nature whatsoever, known or unknown, fixed or contingent (hereinafter called "Released Claims"), including, without limitation, Released Claims which any Party now has or may in the future have against any other Party and/or the Additional Releasees, as alleged in or arising out of, or which could have been raised in or could have been related to the Incident and/or Subject Action.

3.6 Civil Code section 1542 Release. The Parties, and each of them, intend that this Agreement shall be a full and final settlement of and bar to any and all claims and/or causes of action arising between and/or among them, including without limitation, the Released Claims. In connection with the release made herein, the Parties acknowledges that they may hereafter discover facts different from or in addition to the facts which they may know or believe to be

true with respect to the Subject Action and/or the Released Claims, but that they intend to fully and forever settle all disputes with each other and Additional Releasees. In furtherance of such intention, the release given herein shall be and remain in effect as a full and complete mutual release, notwithstanding discovery of any such different or additional facts. Therefore, the Parties acknowledge that they has been informed of, and are familiar with, the provisions of Civil Code section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The Parties, and each of them, hereby waive and relinquish all rights and benefits under Civil Code section 1542 to the full extent that they may lawfully waive all such rights and benefits pertaining to the claims and/or causes of action arising between and/or among them, including without limitation, the Released Claims.

3.7 Continuing Jurisdiction of Court. The Parties stipulate that the Court shall continue to have jurisdiction over this matter to enforce this settlement pursuant to Code of Civil Procedure section 664.6 and any analogous provision of federal law.

3.8 Denial of Liability. The Parties agree and mutually acknowledge that this Agreement is for settlement purposes only. The Parties have denied, and continue to deny, any wrongdoing in connection with the actions or inactions alleged in the Subject Action. Neither this Agreement nor any action taken pursuant to this Agreement shall constitute any admission of any wrongdoing, fault, violation of law, or liability of any kind on the part of the Parties, or any admission by and of the Parties of any claim or allegations made in any action against such party. This Agreement is entered into to avoid the attorneys' fees, costs, expenses and risks associated with continued litigation of the claims and defenses asserted in the Subject Action, including, without limitation, the Released Claims.

3.9 No Assignment of Claim. The Parties represent and warrant that they have not sold, assigned or transferred, or purported to sell, assign or transfer, and shall not hereafter sell, assign or transfer, any obligations, liabilities, demands, claims, costs, expenses, debts, controversies, damages, rights, actions, or causes of action released pursuant to this Agreement, including, without limitation, the Released Claims.

3.10 Tax Consequences. The Parties make no representations as to whether there are any tax consequences associated with this Agreement, including, but not limited to, the Settlement Amount. The Parties agree that each Party is responsible for making its own determination of the tax consequences of the settlement and this Agreement.

3.11 Integrated Agreement. This Agreement is the final and entire agreement between the Parties concerning the subject matter of this Agreement. All agreements of the Parties with

respect to the subject matter hereof are in writing and supersede all prior written and oral agreements and understandings of the Parties. This Agreement cannot be modified except by a written document signed by all of the Parties. None of the Parties are relying upon any other negotiations, discussions or agreements in connection with the subject matter of this Agreement. This is a fully integrated agreement.

3.12 Warranty of Authorization. Any person executing this Agreement on behalf of any Party does hereby personally represent and warrant to the other Parties that he or she has the authority to execute this Agreement on behalf of, and to fully bind, such Party.

3.13 Independent Representation by Counsel. The Parties represent and declare that in executing this Agreement, they have relied solely upon their own judgment, belief and knowledge, and the advice and recommendations of their own independently-selected counsel, if they chose to retain counsel, concerning the nature, extent and duration of their rights and claims hereunder, and that, except as provided herein, they have not been influenced to any extent whatsoever in executing this Agreement by any representations, statements or omission pertaining to any of the matters herein contained by any Party or by any persons representing any Party. Each Party to this Agreement warrants to the other Party that it has either had the assistance of counsel in negotiating and preparing this Agreement, or could have had such assistance and voluntarily declined to obtain such assistance.

3.14 Governing Law. This Agreement shall in all respects be interpreted, enforced and governed by and under the laws of the State of California applicable to instruments, persons and transactions having legal contacts and relations solely within the State of California. Venue for any such action shall be in the Superior Court for the County of Riverside or the United States District Court for the Central District of California, Eastern Division.

3.15 Severability. If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, such a portion shall be deemed severed from this Agreement, and the remaining portions shall remain in full force and effect as though such invalid or unenforceable provisions or portions had not been a part of this Agreement.

3.16 Construction. The language of this Agreement shall be construed as a whole, according to its fair meaning, and not strictly for or against any of the Parties.

3.17 Headings. The headings of this Agreement are for convenience and ease of reference only, and shall not be used to construe, expand, or limit the terms of this Agreement.

3.18 Execution in Counterparts. This Agreement may be executed in counterparts by the Parties, by either an original signature or signature transmitted by facsimile or electronic transmission, or other similar process, and shall become effective and binding upon the Parties at such time as all of the signatories hereto have signed the original or a counterpart original of this Agreement. All counterparts so executed shall constitute one Agreement, binding upon all of the Parties hereto, notwithstanding that all of the Parties are not signatory to the original or the same counterpart.

3.19 Attorney's Fees. Should any Party hereto reasonably retain counsel for the purpose of enforcing or preventing the breach of any provision of this Agreement, as set forth in the Agreement, including, but not limited to, instituting or defending any action or proceeding to enforce any provision of this Agreement, for damages by reason of any alleged breach of any provision hereof, for declaration of such Party's rights or obligations hereunder, or for any other judicial remedy, then, if said matter is settled by arbitration or judicial determination, the prevailing Party shall be entitled to be reimbursed by the losing Party or Parties for all costs and expenses incurred thereby, including, but not limited to, reasonable attorneys' fees and costs.

3.20 Survivability of Covenants. All representations and agreements set forth in this Agreement shall be deemed continuing and shall survive the execution date of this Agreement.

3.21 No Construction Against Drafter. Each of the Parties agrees that each has participated in arriving at the final language of this Agreement and, therefore, this Agreement shall not be construed against any party as the drafter.

3.22 Covenant to Take Further Actions Necessary. The Parties hereby agree to execute such other documents and to take such other action as may be reasonably necessary to further the purpose of this Agreement, with the Parties to bear their own costs and attorneys' fees for these additional actions.

3.23 Third-Party Beneficiaries. It is expressly intended and agreed that the unnamed Doe defendants are third party beneficiaries of this Agreement, that the dismissal with prejudice of the Subject Action includes any claims against them, and that they are released from any liability related to the Incident and Subject Action. Except as stated in this paragraph, and except for the rights of beneficiaries pursuant to the releases provided, as well as the indemnitees as set forth herein, there are no third-party beneficiaries to this Agreement, and nothing herein shall confer any enforceable rights on non-signatory persons or entities.

3.24 Effective Date. This Agreement shall be effective as of the date of its complete execution by the last signing Party.

3.25 Valuable Consideration; Finality. This Agreement is entered into in consideration of the recitals, promises, mutual covenants and warranties set forth in this Agreement, and for other good and valuable consideration, the receipt of which is hereby acknowledged by the Parties. This Agreement is intended to be final and binding on each of the Parties, and is further intended to be effective as a full and final accord and satisfaction between them regardless of any claims of fraud, misrepresentation, concealment of fact, mistake of fact or law, or any other circumstances whatsoever. Each Party relies upon the finality of this Agreement as a material factor inducing that Party's execution of this Agreement.

3.26 Plaintiff's Assumption of Obligation for any Medicare Payments. The Parties have considered the interest of Medicare, Medicaid and Medi-Cal (collectively "Medicare") in this settlement and have determined that a specific allocation for future Medicare expenses is not required in this Agreement due to the fact that no future medical expense is anticipated, the City has not accepted liability for Plaintiff's claim for payment and is agreeing to pay the Settlement

Amount solely to avoid the risk and associated expense of continued litigation, and that the Parties agree that the Settlement Amount is intended to compensate Plaintiff only for Plaintiff's pain and suffering incurred. Plaintiff is a Medicare beneficiary, and as such, the City will report this settlement and the Settlement Amount pursuant to the Medicare, Medicaid and SCHIP Extension Act ("MMSEA"), and will notify Medicare pursuant to 42 CFR 411.25. It is not the intention of the Parties to shift the responsibility of future medical benefits to the Federal Government. In reaching this Agreement, Plaintiff and the City have considered Plaintiff's entitlement to Social Security disability benefits pursuant to 42 U.S.C. section 423, Plaintiff's receipt of Medicare benefits under 42 U.S.C. section 1395y, as well as the ability of the Centers for Medicare and Medicaid Services ("CMS") to subrogation and intervention pursuant to 42 U.S.C. section 1395y(B)(2), to recover any overpayment made by Medicare. This Agreement is intended to foreclose the City's responsibility for any and all future payments of Plaintiff's past, present and future medical expenses, if any. Plaintiff shall be responsible for determining the final amount of any liens asserted by Medicare for reimbursement from the Settlement Amount, and Plaintiff's Counsel shall pay Medicare directly for the final amount of Medicare's lien(s), if any, up to the amount of the Settlement Amount. Plaintiff shall also be responsible for paying any additional reimbursements if so entitled to Medicare and any other entity or insurance company that either has paid or will pay for any of Plaintiff's medical expenses related to the injuries allegedly suffered in the Incident and Subject Action. In the event that CMS or any insurance company or government entity shall ever seek reimbursement from Plaintiff and/or the City for medical expenses for the injuries arising out of the Incident and/or Subject Action, Plaintiff and Plaintiff's Counsel shall indemnify and hold the City, all Additional Releasees, and all persons and entities acting on behalf of the City in defending and resolving this Subject Action, harmless as set forth in Section 3.28 of this Agreement. Moreover, Plaintiff hereby waives any rights that she may have to assert a private cause of action against the City pursuant to 42 U.S.C section 1395y(B)(3).

3.27 Representations and Warranties Regarding Outstanding Liens or Claims. Plaintiff and Plaintiff's Counsel represent and warrant that there are no attorney, medical, or other liens that have been served or filed to date in connection with the Subject Action. Plaintiff and Plaintiff's Counsel further represent and warrant that they have notified any insurance companies or other medical payment plans/providers that may have paid any sums of money for the damages and injuries alleged in the Subject Action, including but not limited to Medicare. Plaintiff and Plaintiff's Counsel represent and acknowledge that they have negotiated and/or are negotiating with all such providers, including but not limited to Medicare, for reimbursements of any and all liens for past, present and future medical expenses. The Parties agree that the City shall have no obligation to reimburse any medical providers for any expenses incurred as a result of the Incident and/or injuries giving rise to the Subject Action, and Plaintiff and Plaintiff's Counsel shall be responsible for paying all such sums from the Settlement Amount should any such payments be necessary.

3.28 Indemnity. Plaintiff understands that his receipt the Settlement Amount may affect his rights to other government benefits, insurance benefits, disability benefits or pension benefits, and Plaintiff further understands that CMS, Medicare or other government entity, insurance company or collection agency may seek to recover up to the entire Settlement Amount for medical expenses related to the injuries arising out of the Subject Action. Despite this possibility, Plaintiff desires to enter into this Agreement to settle Plaintiff's liability claim against

the City and the Additional Releasees as set forth herein, and Plaintiff and Plaintiff's Counsel expressly accept the risks set forth herein. Plaintiff agrees that he will not seek future compensation from any insurance companies, government entities or other medical payment plans/providers for the damages and injuries alleged in the Subject Action without first notifying said insurance companies, government entities or medical payment plans/providers of this Agreement and the terms contained in this Agreement. Plaintiff and Plaintiff's Counsel agree that they will defend, indemnify and hold the City, all above-named Additional Releasees, and all persons and entities acting on behalf of the City in defending and resolving this Subject Action, including but not limited to the City's attorneys, Human Resources / Risk Management staff, third party claims administrators and excess insurers, harmless from any and all future claims, suits, liens, demands, obligations, costs, and expenses, that may be asserted by any person or entity who claims to be owed compensation or reimbursement, or claims to have an interest in any of the matters released in connection herewith, including but not limited to Medicare. This includes the payment of reasonable attorneys' fees incurred by the City, Additional Releasees and/or the persons and entities acting on behalf of the City, as a result of having to defend any future claims, demands, liens or actions brought by any person or entity that claims to be owed compensation or reimbursement, or claims to have an interest in the matters released.

3.29 Confidentiality.

3.29.1 Plaintiff and Plaintiff's Counsel agree that they shall keep the terms, amount and fact of this Agreement confidential. Plaintiff and Plaintiff's Counsel, therefore, represent and warrant that they have not disclosed and agree that they shall not disclose any information concerning this Agreement, to anyone except their tax and legal advisors, who will be advised of the existence of this confidentiality clause and shall agree to be bound by it prior to making any disclosure to them regarding this Agreement, or to federal or state taxing authorities, or pursuant to a lawful subpoena or court order. Plaintiff and Plaintiff's Counsel shall be liable for their own breaches of confidentiality and any breaches of confidentiality by persons to whom they have voluntarily disclosed information about this Agreement. Nothing contained in this paragraph shall prevent Plaintiff and Plaintiff's Counsel from responding to inquiries about the Incident or Subject Action by stating that the Parties have "amicably resolved all differences," provided, however, that in so doing, Plaintiff and Plaintiff's Counsel shall not disclose the fact or amount of any payments made or to be made hereunder and shall not disclose any other terms of this Agreement or the settlement described herein.

3.29.2 Plaintiff and Plaintiff's Counsel understand that City may be required to provide a copy of this Agreement pursuant to a request under the California Public Records Act, or City may otherwise be legally compelled or required to make other disclosures about this Agreement.

[SIGNATURES ON FOLLOWING 2 PAGES]

**CITY
SIGNATURE PAGE FOR
CITY OF CORONA
SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

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THE UNDERSIGNED HEREBY DECLARES THAT THE TERMS OF THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE HAVE BEEN COMPLETELY READ AND ARE FULLY UNDERSTOOD, AND BY EXECUTION HEREOF VOLUNTARILY ACCEPTS THE TERMS WITH THE INTENT TO BE LEGALLY BOUND THEREBY.

CITY OF CORONA

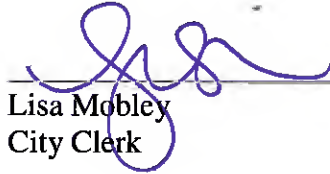
By:



Darrell Talbert
City Manager

2-8-16
Date

Attest:



Lisa Mobley
City Clerk

Approved as to Form:



Dean Derleth
John Higginbotham
City Attorney's Office
Attorneys for City of Corona

**PLAINTIFF
SIGNATURE PAGE FOR
CITY OF CORONA
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PLAINTIFF

By: 

Jose Angel Miranda
Plaintiff

2/4/16
Date

Approved as to Form:



John Tiedt
Tiedt & Hurd
Attorney for Plaintiff

2/4/16